REMARKS

Presently, claims 1-2, 4-17, 20, 22-28, 32-34, 36, 38-50 and 52 are pending in the application. A Request for Continued Examination ("RCE") under 37 C.F.R. §1.114 is being submitted herewith. Claims 13-17, 26-28, 32-34, 36 and 38-50 have been allowed. Claims 24 and 25 would be allowable if rewritten in independent form to include all features of the base claim and any intervening claims. Claim 51 has been canceled. Independent claim 1 has been amended to more clearly define the present invention, be consistent with the allowable subject matter of independent claims 13 and 28, and correct an antecedent basis error noticed by Applicant. New claim 52, corresponding to original claim 19 (now canceled) has been added to depend from independent claim 13. Claim 20 has been amended to depend from new claim 52. No new matter has been added to the application by the foregoing amendments.

Allowable Subject Matter

The Examiner has allowed claims 13-17, 26-28, 32-34, 36 and 38-50. Applicant thanks the Examiner for this indication of allowable subject matter.

The Examiner has objected to claims 24 and 25, but stated that these claims would be allowable if rewritten in independent form to include all features of the base claim and any intervening claims.

New claim 52 (corresponding to original claim 19) has been added to depend from independent claim 13, which is allowed. Claim 20 has been amended to depend from new claim 52. Therefore, the Examiner's objection to claims 24 and 25 is overcome, since these claims now also incorporate the allowable subject matter of claim 13. Accordingly, claims 20, 22-27 and 52 are allowable at least by their dependency on independent claim 13. Claim 51 has been canceled. Reconsideration and withdrawal of the Examiner's objection to claims 24 and 25 are respectfully requested.

Examiner Interview

Applicant and the undersigned thank Examiner Sheleheda for the courtesies extended during a personal interview conducted on August 17, 2005, to discuss the present application and Office Action. During the interview, proposed amendments to the claim 1 were discussed. Applicant's reasons as to why such amendments placed the non-allowed claims in condition for allowance were also discussed. Such reasons are detailed below.

As a result of the interview, the Examiner stated that the proposed amendments with respect to independent claim 1 were understood, but reserved the right to review Applicant's amendments and corresponding arguments in detail upon submission of a formal response. The amendments submitted herewith are similar to the amendments presented to the Examiner during the interview.

Prior Art Rejections – § 103 (a)

The Examiner has rejected claims 1, 2, 4-8 and 10-12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,463,585 to Hendricks *et al.* ("Hendricks"). The Examiner contends that Hendricks teaches all features of Applicant's claimed invention, with the exception of using queues having an ordered list of ARLs comprising a pointer and inserting advertisements in accordance with the queue. The Examiner further takes Official Notice that such features are well known in the art, and concludes that it would have been obvious to modify Hendricks' system with the well known features of the art to result in Applicant's claimed invention. Applicant respectfully traverses this rejection.

Hendricks discloses a system for providing television programming and targeted advertisements to consumers' homes. In Hendricks, information is sent from a program controller to local storage and/or real-time display in a consumer's terminal. The stored information may include control information, programming and/or advertisements. Additionally, Hendricks discloses that information related to users' preferences and/or viewing actions or habits may be observed, retrieved and analyzed, such that a particular

consumer terminal may be assigned to a desired target category. The target category, based for example on demographic information, is utilized to determine which advertisements to target at a consumer or groups of consumers. The consumer groups may be modified depending on changing target criteria. Hendricks teaches that there are several different methods of conveying the desired advertisements to the audience. In one embodiment, Hendricks employs "feeder channels" to deliver the targeted advertisements. In such a system, when designated breaks in regular programming occur, the system switches to (or between) one or more alternate channel(s) that contain different, targeted programming (e.g., advertisements). The particular feeder channel that is displayed to the consumer may depend on the specific target audience, or group to which that feeder channel (and the advertisements contained therein) is directed. Thus, it may be advantageous to switch back and forth between the various feeder channels to display the most desirable ad, or to designate one or more groups of consumers to a particular feeder channel. Hendricks further discloses that the switching plan may also be stored locally at the consumer's terminal. In another embodiment, the advertisements may be stored locally at the user's terminal for later display. Thus, the targeted advertisements are sent to the user's terminal prior to display and stored. When the designated program break occurs, the locally stored advertisement is retrieved and displayed. Alternatively, the targeted advertisements may be multiplexed and transmitted along with the program content.

The Examiner has taken Official Notice (see page 4 of the Office Action) that it is "well known in the art to utilize a queue to properly indicate the order in which actions are to be performed, such as the order in which upcoming advertisements are to be inserted, for the typical benefit of reducing processing requirements and providing more time to correctly perform a function by indicating, in advance, an order in which particular functions (such as ad insertion) are to be performed." The Examiner also takes Official Notice that it is well known in the art "to utilize pointers which indicate the location of corresponding data, instead of manipulating the data itself, for the typical benefits of reducing memory and processor requirements by only manipulating location pointers instead of the data in its entirety." However, Applicant disagrees that there are "facts outside of the record which are capable of instant and unquestionable

demonstration as being 'well-known' in the art," as required by M.P.E.P. §2144.03, which would support an Examiner's finding of Official Notice.

To the extent that the Examiner's taking of Official Notice may be applied to the pending claims, including claims 1, 2, 4-8 and 10-12, Applicant respectfully traverses the Examiner's taking of Official Notice, and respectfully requests that the Examiner support the taking of Official Notice by producing a relevant reference that shows/teaches the asserted facts, and that the Examiner identify a specific teaching in the reference to support a combination with Hendricks.

Independent claim 1, as amended, recites:

> A method of transmitting television programming and advertising from a head end to subscribers at a plurality of subscriber nodes, said method comprising the steps of:
>
> (a) creating a plurality of subscriber groups, members of said subscriber groups being based on at least one characteristic of said subscribers relevant to advertising;
>
> (b) receiving at least one programming channel of television programming;
>
> (c) forming from said at least one programming channel a plurality of presentation channels of television programming, the plurality of presentation channels having programming identical to said at least one programming channel, each presentation channel corresponding to one of the subscriber groups;
>
> (d) storing a plurality of advertisements for insertion into advertising avails in said presentation channels;
>
> (e) storing for each presentation channel a queue comprising an ordered list of advertisement resource locators (ARLs), said ARLs comprising a pointer to a location of a corresponding advertisement;
>
> (f) determining advertising avails in each of said presentation channels;
>
> (g) for each presentation channel, determining from said queue corresponding to said presentation channel an advertisement to be inserted in the advertising avails in said presentation channel;

(h) inserting said advertisement determined in step (g) into said corresponding avail; and

(i) <u>transmitting each of said presentation channels to at least those subscriber nodes in said subscriber group corresponding to said presentation channel</u>.

Hendricks does not teach or suggest the step of "<u>forming from said at least one programming channel a plurality of presentation channels of television programming, the plurality of presentation channels having programming identical to said at least one programming channel</u>...," as recited in independent claim 1. Applicant respectfully disagrees with the Examiner's assertion (see page 2 of the Office Action) that the feeder channels in Hendricks that contain alternative ads assigned to a particular program channel are a plurality of programming channels "having programming identical to said at least one programming channel." In Hendricks, the feeder channels each contain a particular set of targeted <u>advertisements</u> – not programming – that are displayed to the subscriber at the appropriate time, depending on the particular programming channel being viewed by the subscriber. Hendricks' feeder channels thus do not even contain programming, let alone programming that is identical to a programming channel from which the feeder channels were formed. Rather, Hendricks' feeder channels simply include advertisements that are different for each individual feeder channel. In Applicant's invention, the plurality of presentation channels are formed from a programming channel, and each of the presentation channels contain programming identical to that of the programming channel from which they were formed. Moreover, Hendricks does also not teach or suggest "transmitting each of said presentation channels to at least those subscriber nodes in said subscriber group corresponding to said presentation channel." That is, Hendricks' system does not transmit presentation channels containing targeted advertisements to the groups of subscribers. Rather, as discussed, the feeder channels that are separately transmitted provide the targeted ads to the subscribers for insertion into the programming stream. Thus, Hendricks does not teach or suggest all of the features of independent claim 1 as contended by the Examiner. Accordingly, even if the facts relied on by the Examiner in the taking of Official Notice are true, the combination of Hendricks and any facts well-known in the art does not teach

or suggest all of the elements in independent claim 1. Accordingly, independent claim 1 is allowable over Hendricks.

Dependent claims 2, 4-8 and 10-12 are allowable at least by their dependency on independent claim 1. Reconsideration and withdrawal of the Examiner's obviousness rejection of claims 1, 2, 4-8 and 10-12 are respectfully requested.

The Examiner has rejected claim 9 as being unpatentable over Hendricks in view of U.S. Patent No. 6,487,721 to Safadi ("Safadi"). As discussed above, independent claims 1 is believed to be allowable over Hendricks. Applicant respectfully submits that Safadi does not teach or suggest the element missing from Hendricks. Accordingly, independent claim 1 is allowable over the combination of Hendricks and Safadi. Claim 9 is thus allowable at least by its dependency on independent claim 1. Reconsideration and withdrawal of the Examiner's obviousness rejection of claim 9 are respectfully requested.

The Examiner has rejected claims 20, 22, 23 and 51 are being unpatentable over Hendricks in view of U.S. Patent No. 6,252,634 to Yuen *et al.* ("Yuen"). In the foregoing amendment, new independent claim 52 has been added to depend from independent claim 13 and correspond to original claim 19. Thus, new claim 52 incorporates the allowable subject matter of independent claim 13. Thus, new claim 52 is believed to be allowable at least by its dependency on independent claim 13. Claims 20, 22 and 23 are therefore also allowable at least by their dependency on claims 13 and 19. Claim 51 has been canceled. Reconsideration and withdrawal of the Examiner's obviousness rejection of claims 20, 22, 23 and 51 are respectfully requested.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully submits that the Examiner's rejections have been overcome, and that the application, including claims 1-2, 4-17, 20, 22-28, 32-34, 36, 38-50 and 52, is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejections and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

Date: _Aug 29, 2005_   By: _____

Charles A. Eldering
Registration No. 39,180
Technology, Patents, & Licensing, Inc.
6206 Kellers Church Road
Pipersville, PA 18947
Telephone: 215-766-2100
Facsimile: 215-766-2920

Customer Number: 27832